IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 36384 of 2004(F)

PETITIONER:

T.RAMACHANDRAN PILLAI, PEON,
SUB TREASURY, CHENGANOOR.
RESIDING AT RAJALAKSHMI BHAVAN,
THULAMPARAMBU NORTH, MANNARASALA P.O.,
HARIPAD, ALAPPUZHA DISTRICT.

BY ADV. DR.K.P.SATHEESAN,
SRI.K.K.GOPINATHAN NAIR,
SRI.M.R.JAYAPRASAD,
SRI.K.K.RAJEEV,
SRI.T.K.KAMALJITH,
SMT.C.V.RAJALAKSHMI.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE PRINCIPAL SECRETARY, (FINANCE),
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF TREASURIES,**
   DIRECTORATE OF TREASURIES,
   THIRUVANANTHAPURAM.

3. **THE JOINT DIRECTOR OF TREASURIES,**
   THIRUVANANTHAPURAM.

4. **THE SUB TREASURY OFFICER,**
   CHENGANNUR.

BY GOVERNMENT PLEADER SRI. N. MANOJ KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007, ALONG WITH W.P.(C). NOS. 35965 OF 2004 & 35610 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.36384/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 02/08/2003 PASSED BY THE R.2.

EXT.P.2: COPY OF THE ORDER DTD. 15/09/2003 PASSED BY THE R.2.

EXT.P.3: COPY OF THE LETTER DTD. 04/08/2003 ISSUED BY THE R.2.

EXT.P.4: COPY OF THE REPLY DTD. 12/08/2003 BEFORE THE R.3.

EXT.P.5: COPY OF THE ADDITIONAL REPLY SUBMITTED BY THE PETITIONER.

EXT.P.6: COPY OF THE ORDER DTD. 24/01/2004 PASSED BY THE R.3.

EXT.P.7: COPY OF THE GOVT. ORDER DTD. 18/09/2003 PASSED BY THE R.3.

EXT.P.8: COPY OF THE ORDER DT. 23/09/2003 PASSED BY THE R.2.

EXT.P.9: COPY OF THE MEMORANDUM OF APPEAL SUBMITTED BY THE PETITIONER BEFORE THE R.2.

EXT.P.10: COPY OF THE LETTER DTD.21/10/2004 ISSUED BY THE R.1.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) Nos. 36384, 35610 & 35965 OF 2004

Dated this the 23rd day of May, 2007

J U D G M E N T

WP(C) No.36384 of 2004

The petitioner was a Peon in the Treasury Department. Allegations of misappropriation were raised against him and others in 1992-93. The petitioner submits, enquiry was held into those allegations and further proceedings against him were dropped. Later, a criminal case was registered against the petitioner and others based on the very same allegations. The case was investigated and finally tried by the Special Court. The petitioner and others were convicted by the said Court. But, later this Court by the judgment in Criminal Appeal No.623 of 2001 dated 8-11-2002 acquitted the petitioner and others. Pursuant to the decision of this Court, the petitioner who was dismissed from service pursuant to the conviction by the Special Court, was reinstated into service on 2-8-2003.

2. The Government decided to take disciplinary action against the petitioner and others notwithstanding their acquittal by this Court. Memo of charges were issued. Their explanations were obtained and final orders in the said proceedings were passed as per Ext.P6. Punishment of censure was imposed. It was also ordered that the period of suspension and the period

he was out of service pursuant to the dismissal order will be treated as eligible leave. Aggrieved by the said order, the petitioner preferred Ext.P9 appeal before the second respondent. It appears that the petitioner's appeal was forwarded to the Government and the Government dismissed the same by Ext.P10. The petitioner submits, a similarly placed person who was also an accused along with the writ petitioner has been let off without any punishment and he has been granted entire arrears of salary treating the period he was out of service as duty for all purposes. Ext.P8 dated 23-9-2003 is that order. The petitioner claims similar treatment in his appeal memo. But, the said point was not considered while Ext.P10 was passed. Hence this writ petition.

3. The first respondent has filed a counter affidavit resisting the prayers in the writ petition.

4. I heard the learned counsel on both sides. I feel that Ext.P9 appeal has not been properly disposed of by the Government. It has been dismissed by a single sentence order. The Government was bound to consider the grounds raised by the petitioner and pass a speaking order thereon. It should have adverted to the contentions raised by the petitioner relying on Ext.P8 order passed in favour of one Mr.J.Maniyan who was similarly placed by the petitioner. Therefore, Ext.P10 is quashed. The first respondent is directed to pass fresh orders on Ext.P9 in accordance with

law, after affording an opportunity of being heard to the petitioner, in the light of the observations made herein-above within three months from the date of receipt of a copy of this judgment.

WPC.Nos.35965 & 35610 of 2004:

5. The case of the writ petitioners in these writ petitions is identical to the case of the petitioner in W.P.(C).36384 of 2000. So, in these cases also the appellate orders are liable to be quashed and the appeals are liable to be remitted to the Government for fresh disposal, in accordance with law. But, the learned counsel for the petitioners raised a new point which was not raised in the appeals filed by the petitioners. According to him, the petitioners in these writ petitions were honourably acquitted and therefore, there cannot be any finding of guilt against them for the imposition of punishment in the disciplinary proceedings. It is a well settled position in law that if the criminal Court acquits an accused honourably, the disciplinary authority can not initiate any disciplinary proceedings against him based on the same set of facts. Since the said point was not raised in the appeals filed by them, the Government cannot be blamed for not considering that aspect. If so advised, the petitioners may amend their appeal memorandums and raise the above-said point also as an additional ground. In view of the reasons given by me in the judgment in W.P.(C).36384 of

2004, Ext.P9 in W.P.(C) No.35610 of 2004 and Ext.P10 in W.P.(C) No.35965 of 2004 are quashed. The respective appeals shall be re-considered by the Government in accordance with law, in the light of the observations made herein-above and also in the judgment in W.P.(C).36384 of 2004, after affording an opportunity of being heard to the petitioners within three months from the date of receipt of a copy of this judgment.

K.BALAKRISHNAN NAIR, JUDGE.

MS